

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS G. MAZZA,

Plaintiff,

-against-

W. CAPUTO,

Defendant.
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TOWNES, United States District Judge:

**MEMORANDUM
AND ORDER**

05-CV-3546 (SLT)

Plaintiff Thomas G. Mazza, appearing *pro se*, filed a sparse one-page handwritten complaint. By order dated August 10, 2005, the Court directed plaintiff to file an amended complaint and to set forth the basis for the Court's subject matter jurisdiction. The Court also found that diversity of jurisdiction pursuant to 28 U.S.C. § 1332 was not available because both parties reside in the same State.

In response, plaintiff filed an amended complaint which states in its entirety:

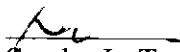
The court has awarded me a default judgment. I have not received any monies from Mr. Caputo. I cannot hire a landscaper to correct the damage Mr. Caputo has done to my property because I do not have the money. 1 million dollars damages are justified. I cannot sell my home as intended because the landscape devalues the property tremendously. I am a victim of the West Nile Virus and was in the VA when Mr. Caputo decided to dump the dirt from the footing onto my lawn. Fence replace footing. I did not authorize Mr. Caputo to do so.

It is clear from the amended complaint that the claim against defendant Caputo does not arise under the Constitution, laws or treaties of the United States. 28 U.S.C. § 1331. As such, this action is dismissed for lack of subject matter jurisdiction. Rene v. Citibank, NA, 32 F.Supp. 2d 541-42 (E.D.N.Y. 1999).

CONCLUSION

Accordingly, the action, filed *in forma pauperis*, is dismissed for lack of subject matter jurisdiction. Fed. R.Civ. P. 12 (h)(3). The Court certifies pursuant to 28 U.S.C. § 1915 (a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.


Sandra L. Townes
United States District Judge

Dated: Brooklyn, New York
September 27, 2005